

REFERENCE TITLE: death penalty; repeal; natural life

State of Arizona  
House of Representatives  
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Second Regular Session  
2006

## HB 2548

Introduced by  
Representatives Sinema, Kirkpatrick, Prezelski: Alvarez, Downing,  
Gallardo, Lopes, Lopez L, Meza, Miranda B, Tom

### AN ACT

AMENDING SECTIONS 12-120.21, 13-702, 13-703, 13-1105, 13-3841, 13-3854, 13-3856, 13-3859.02, 13-3870, 13-3961, 13-4031, 13-4033, 13-4040, 13-4041, 13-4234, 21-102, 31-445 AND 41-1013, ARIZONA REVISED STATUTES; REPEALING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3; REPEALING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4; REPEALING SECTIONS 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705, 13-706, 13-4042 AND 13-4234.01, ARIZONA REVISED STATUTES; REPEALING TITLE 13, CHAPTER 38, ARTICLE 17, ARIZONA REVISED STATUTES; RELATING TO THE REPEAL OF THE DEATH PENALTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-120.21, Arizona Revised Statutes, is amended to  
3 read:

4 12-120.21. Jurisdiction and venue

5 A. The court of appeals shall have:

6 1. Appellate jurisdiction in all actions and proceedings originating  
7 in or permitted by law to be appealed from the superior court, ~~except~~  
8 ~~criminal actions involving crimes for which a sentence of death has actually~~  
9 ~~been imposed.~~

10 2. Jurisdiction to issue writs of certiorari to review the lawfulness  
11 of awards of the industrial commission and to enter judgment affirming or  
12 setting aside the awards.

13 3. Jurisdiction to issue injunctions and other writs and orders  
14 necessary and proper to the complete exercise of its appellate jurisdiction.

15 4. Jurisdiction to hear and determine petitions for special actions  
16 brought pursuant to the ARIZONA rules of procedure for special actions,  
17 without regard to its appellate jurisdiction.

18 B. A case or appeal of which the court of appeals has jurisdiction in  
19 an action or proceeding originating in or permitted by law to be appealed  
20 from the superior court in a county shall be brought or filed in the division  
21 ~~which~~ THAT contains that county. An application for a writ of certiorari to  
22 review the lawfulness of an award of the industrial commission shall be  
23 brought in division 1.

24 Sec. 2. Section 13-702, Arizona Revised Statutes, is amended to read:

25 13-702. Sentencing: definition

26 A. Sentences provided in section 13-701 for a first conviction of a  
27 felony, except those felonies involving the discharge, use or threatening  
28 exhibition of a deadly weapon or dangerous instrument or the intentional or  
29 knowing infliction of serious physical injury upon another or if a specific  
30 sentence is otherwise provided, may be increased or reduced by the court  
31 within the ranges set by this subsection. Any reduction or increase shall be  
32 based on the aggravating and mitigating circumstances contained in  
33 subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
34 1. For a class 2 felony	4 years	10 years
35 2. For a class 3 felony	2.5 years	7 years
36 3. For a class 4 felony	1.5 years	3 years
37 4. For a class 5 felony	9 months	2 years
38 5. For a class 6 felony	6 months	1.5 years

39 B. The upper or lower term imposed pursuant to section 13-604,  
40 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may  
41 be imposed only if one or more of the circumstances alleged to be in  
42 aggravation of the crime are found to be true by the trier of fact beyond a  
43 reasonable doubt, or in mitigation of the crime are found to be true by the  
44 trial judge, on any evidence or information introduced or submitted to the  
45

1 court or the trier of fact before sentencing or any evidence presented at  
2 trial, and factual findings and reasons in support of such findings are set  
3 forth on the record at the time of sentencing.

4 C. For the purpose of determining the sentence pursuant to section  
5 13-710 and subsection A of this section, the trier of fact shall determine  
6 and the court shall consider the following aggravating circumstances:

7 1. Infliction or threatened infliction of serious physical injury,  
8 except if this circumstance is an essential element of the offense of  
9 conviction or has been utilized to enhance the range of punishment under  
10 section 13-604.

11 2. Use, threatened use or possession of a deadly weapon or dangerous  
12 instrument during the commission of the crime, except if this circumstance is  
13 an essential element of the offense of conviction or has been utilized to  
14 enhance the range of punishment under section 13-604.

15 3. If the offense involves the taking of or damage to property, the  
16 value of the property so taken or damaged.

17 4. Presence of an accomplice.

18 5. Especially heinous, cruel or depraved manner in which the offense  
19 was committed.

20 6. The defendant committed the offense as consideration for the  
21 receipt, or in the expectation of the receipt, of anything of pecuniary  
22 value.

23 7. The defendant procured the commission of the offense by payment, or  
24 promise of payment, of anything of pecuniary value.

25 8. At the time of the commission of the offense, the defendant was a  
26 public servant and the offense involved conduct directly related to the  
27 defendant's office or employment.

28 9. The victim or, if the victim has died as a result of the conduct of  
29 the defendant, the victim's immediate family suffered physical, emotional or  
30 financial harm.

31 10. During the course of the commission of the offense, the death of an  
32 unborn child at any stage of its development occurred.

33 11. The defendant was previously convicted of a felony within the ten  
34 years immediately preceding the date of the offense. A conviction outside  
35 the jurisdiction of this state for an offense that if committed in this state  
36 would be punishable as a felony is a felony conviction for the purposes of  
37 this paragraph.

38 12. The defendant was wearing body armor as defined in section 13-3116.

39 13. The victim of the offense is at least sixty-five years of age or is  
40 a disabled person as defined by section 38-492.

41 14. The defendant was appointed pursuant to title 14 as a fiduciary and  
42 the offense involved conduct directly related to the defendant's duties to  
43 the victim as fiduciary.

15. Evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3 or because of the defendant's perception of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3.

16. The defendant was convicted of a violation of section 13-1102, section 13-1103, section 13-1104, subsection A, paragraph 3 or section 13-1204, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.15 or more. For the purposes of this paragraph, "alcohol concentration" has the same meaning prescribed in section 28-101.

17. Lying in wait for the victim or ambushing the victim during the commission of any felony.

18. The offense was committed in the presence of a child and any of the circumstances exist that are set forth in section 13-3601, subsection A.

19. The offense was committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.

20. The defendant was impersonating a peace officer as defined in section 1-215.

21. The defendant was in violation of 8 United States Code section 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

22. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:

(a) "Authorized remote stun gun" means a remote stun gun that has all of the following:

(i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.

(ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.

(iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.

(iv) A training program that is offered by the manufacturer.

(b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.

1           23. Any other factor that the state alleges is relevant to the  
2 defendant's character or background or to the nature or circumstances of the  
3 crime.

4           D. For the purpose of determining the sentence pursuant to section  
5 13-710 and subsection A of this section, the court shall consider the  
6 following mitigating circumstances:

7           1. The age of the defendant.

8           2. The defendant's capacity to appreciate the wrongfulness of the  
9 defendant's conduct or to conform the defendant's conduct to the requirements  
10 of law was significantly impaired, but not so impaired as to constitute a  
11 defense to prosecution.

12           3. The defendant was under unusual or substantial duress, although not  
13 such as to constitute a defense to prosecution.

14           4. The degree of the defendant's participation in the crime was minor,  
15 although not so minor as to constitute a defense to prosecution.

16           5. Any other factor that is relevant to the defendant's character or  
17 background or to the nature or circumstances of the crime and that the court  
18 finds to be mitigating.

19 If the trier of fact finds at least one aggravating circumstance, the trial  
20 court may find by a preponderance of the evidence additional aggravating  
21 circumstances. In determining what sentence to impose, the court shall take  
22 into account the amount of aggravating circumstances and whether the amount  
23 of mitigating circumstances is sufficiently substantial to call for the  
24 lesser term. If the trier of fact finds aggravating circumstances and the  
25 court does not find any mitigating circumstances, the court shall impose an  
26 aggravated sentence.

27           E. The court in imposing a sentence shall consider the evidence and  
28 opinions presented by the victim or the victim's immediate family at any  
29 aggravation or mitigation proceeding or in the presentence report.

30           F. Nothing in this section affects any provision of law that ~~imposes~~  
31 ~~the death penalty, that~~ expressly provides for imprisonment for life or that  
32 authorizes or restricts the granting of probation and suspending the  
33 execution of sentence.

34           G. Notwithstanding any other provision of this title, if a person is  
35 convicted of any class 6 felony not involving the intentional or knowing  
36 infliction of serious physical injury or the discharge, use or threatening  
37 exhibition of a deadly weapon or dangerous instrument and if the court,  
38 having regard to the nature and circumstances of the crime and to the history  
39 and character of the defendant, is of the opinion that it would be unduly  
40 harsh to sentence the defendant for a felony, the court may enter judgment of  
41 conviction for a class 1 misdemeanor and make disposition accordingly or may  
42 place the defendant on probation in accordance with chapter 9 of this title  
43 and refrain from designating the offense as a felony or misdemeanor until the  
44 probation is terminated. The offense shall be treated as a felony for all  
45 purposes until such time as the court may actually enter an order designating

1 the offense a misdemeanor. This subsection does not apply to any person who  
 2 stands convicted of a class 6 felony and who has previously been convicted of  
 3 two or more felonies. If a crime or public offense is punishable in the  
 4 discretion of the court by a sentence as a class 6 felony or a class 1  
 5 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting  
 6 attorney:

7 1. Files an information in superior court designating the offense as a  
 8 misdemeanor.

9 2. Files a complaint in justice court or municipal court designating  
 10 the offense as a misdemeanor within the jurisdiction of the respective court.

11 3. Files a complaint, with the consent of the defendant, before or  
 12 during the preliminary hearing amending the complaint to charge a  
 13 misdemeanor.

14 H. For the purposes of this section, "trier of fact" means a jury,  
 15 unless the defendant and the state waive a jury in which case the trier of  
 16 fact means the court.

17 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:

18 13-703. Sentence of life or natural life imprisonment; victims'  
 19 rights

20 A. If ~~the state has filed a notice of intent to seek the death penalty~~  
 21 ~~and the~~ A defendant is convicted of first degree murder as defined in section  
 22 13-1105, the defendant shall be sentenced to ~~death or~~ imprisonment in the  
 23 custody of the state department of corrections for life or natural life ~~as~~  
 24 ~~determined and in accordance with the procedures provided in section~~  
 25 ~~13-703.01. IF THE COURT IMPOSES A NATURAL LIFE SENTENCE, THE COURT SHALL~~  
 26 ~~ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF~~  
 27 ~~THE DEFENDANT'S NATURAL LIFE.~~ A defendant who is sentenced to natural life  
 28 is not eligible for commutation, parole, work furlough, work release or  
 29 release from confinement on any basis. If the defendant is sentenced to  
 30 life, the defendant shall not be released on any basis until the completion  
 31 of the service of twenty-five calendar years if the murdered person was  
 32 fifteen or more years of age and thirty-five years if the murdered person was  
 33 under fifteen years of age or was an unborn child. In this section, for  
 34 purposes of punishment an unborn child shall be treated like a minor who is  
 35 under twelve years of age.

36 ~~B. At the aggravation phase of the sentencing proceeding that is held~~  
 37 ~~pursuant to section 13-703.01, the admissibility of information relevant to~~  
 38 ~~any of the aggravating circumstances set forth in subsection F of this~~  
 39 ~~section shall be governed by the rules of evidence applicable to criminal~~  
 40 ~~trials. The burden of establishing the existence of any of the aggravating~~  
 41 ~~circumstances set forth in subsection F of this section is on the~~  
 42 ~~prosecution. The prosecution must prove the existence of the aggravating~~  
 43 ~~circumstances beyond a reasonable doubt.~~

44 ~~C. At the penalty phase of the sentencing proceeding that is held~~  
 45 ~~pursuant to section 13-703.01, the prosecution or the defendant may present~~

1 ~~any information that is relevant to any of the mitigating circumstances~~  
2 ~~included in subsection G of this section, regardless of its admissibility~~  
3 ~~under the rules governing admission of evidence at criminal trials. The~~  
4 ~~burden of establishing the existence of the mitigating circumstances included~~  
5 ~~in subsection G of this section is on the defendant. The defendant must~~  
6 ~~prove the existence of the mitigating circumstances by a preponderance of the~~  
7 ~~evidence. If the trier of fact is a jury, the jurors do not have to agree~~  
8 ~~unanimously that a mitigating circumstance has been proven to exist. Each~~  
9 ~~juror may consider any mitigating circumstance found by that juror in~~  
10 ~~determining the appropriate penalty.~~

11 ~~D. Evidence that is admitted at the trial and that relates to any~~  
12 ~~aggravating or mitigating circumstances shall be deemed admitted as evidence~~  
13 ~~at a sentencing proceeding if the trier of fact considering that evidence is~~  
14 ~~the same trier of fact that determined the defendant's guilt. The~~  
15 ~~prosecution and the defendant shall be permitted to rebut any information~~  
16 ~~received at the aggravation or penalty phase of the sentencing proceeding and~~  
17 ~~shall be given fair opportunity to present argument as to whether the~~  
18 ~~information is sufficient to establish the existence of any of the~~  
19 ~~circumstances included in subsections F and G of this section.~~

20 ~~E. In determining whether to impose a sentence of death or life~~  
21 ~~imprisonment, the trier of fact shall take into account the aggravating and~~  
22 ~~mitigating circumstances that have been proven. The trier of fact shall~~  
23 ~~impose a sentence of death if the trier of fact finds one or more of the~~  
24 ~~aggravating circumstances enumerated in subsection F of this section and then~~  
25 ~~determines that there are no mitigating circumstances sufficiently~~  
26 ~~substantial to call for leniency.~~

27 ~~F. The trier of fact shall consider the following aggravating~~  
28 ~~circumstances in determining whether to impose a sentence of death:~~

29 ~~1. The defendant has been convicted of another offense in the United~~  
30 ~~States for which under Arizona law a sentence of life imprisonment or death~~  
31 ~~was imposable.~~

32 ~~2. The defendant has been or was previously convicted of a serious~~  
33 ~~offense, whether preparatory or completed. Convictions for serious offenses~~  
34 ~~committed on the same occasion as the homicide, or not committed on the same~~  
35 ~~occasion but consolidated for trial with the homicide, shall be treated as a~~  
36 ~~serious offense under this paragraph.~~

37 ~~3. In the commission of the offense the defendant knowingly created a~~  
38 ~~grave risk of death to another person or persons in addition to the person~~  
39 ~~murdered during the commission of the offense.~~

40 ~~4. The defendant procured the commission of the offense by payment, or~~  
41 ~~promise of payment, of anything of pecuniary value.~~

42 ~~5. The defendant committed the offense as consideration for the~~  
43 ~~receipt, or in expectation of the receipt, of anything of pecuniary value.~~

44 ~~6. The defendant committed the offense in an especially heinous, cruel~~  
45 ~~or depraved manner.~~

1           ~~7. The defendant committed the offense while:~~  
2           ~~(a) In the custody of or on authorized or unauthorized release from~~  
3 ~~the state department of corrections, a law enforcement agency or a county or~~  
4 ~~city jail.~~  
5           ~~(b) On probation for a felony offense.~~  
6           ~~8. The defendant has been convicted of one or more other homicides, as~~  
7 ~~defined in section 13-1101, that were committed during the commission of the~~  
8 ~~offense.~~  
9           ~~9. The defendant was an adult at the time the offense was committed or~~  
10 ~~was tried as an adult and the murdered person was under fifteen years of age,~~  
11 ~~was an unborn child in the womb at any stage of its development or was~~  
12 ~~seventy years of age or older.~~  
13           ~~10. The murdered person was an on duty peace officer who was killed in~~  
14 ~~the course of performing the officer's official duties and the defendant~~  
15 ~~knew, or should have known, that the murdered person was a peace officer.~~  
16           ~~11. The defendant committed the offense with the intent to promote,~~  
17 ~~further or assist the objectives of a criminal street gang or criminal~~  
18 ~~syndicate or to join a criminal street gang or criminal syndicate.~~  
19           ~~12. The defendant committed the offense to prevent a person's~~  
20 ~~cooperation with an official law enforcement investigation, to prevent a~~  
21 ~~person's testimony in a court proceeding, in retaliation for a person's~~  
22 ~~cooperation with an official law enforcement investigation or in retaliation~~  
23 ~~for a person's testimony in a court proceeding.~~  
24           ~~13. The offense was committed in a cold, calculated manner without~~  
25 ~~pretense of moral or legal justification.~~  
26           ~~14. The defendant used a remote stun gun or an authorized remote stun~~  
27 ~~gun in the commission of the offense. For the purposes of this paragraph:~~  
28           ~~(a) "Authorized remote stun gun" means a remote stun gun that has all~~  
29 ~~of the following:~~  
30           ~~(i) An electrical discharge that is less than one hundred thousand~~  
31 ~~volts and less than nine joules of energy per pulse.~~  
32           ~~(ii) A serial or identification number on all projectiles that are~~  
33 ~~discharged from the remote stun gun.~~  
34           ~~(iii) An identification and tracking system that, on deployment of~~  
35 ~~remote electrodes, disperses coded material that is traceable to the~~  
36 ~~purchaser through records that are kept by the manufacturer on all remote~~  
37 ~~stun guns and all individual cartridges sold.~~  
38           ~~(iv) A training program that is offered by the manufacturer.~~  
39           ~~(b) "Remote stun gun" means an electronic device that emits an~~  
40 ~~electrical charge and that is designed and primarily employed to incapacitate~~  
41 ~~a person or animal either through contact with electrodes on the device~~  
42 ~~itself or remotely through wired probes that are attached to the device or~~  
43 ~~through a spark, plasma, ionization or other conductive means emitting from~~  
44 ~~the device.~~



~~G. The trier of fact shall consider as mitigating circumstances any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record and any of the circumstances of the offense, including but not limited to the following:~~

~~1. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.~~

~~2. The defendant was under unusual and substantial duress, although not such as to constitute a defense to prosecution.~~

~~3. The defendant was legally accountable for the conduct of another under the provisions of section 13-303, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution.~~

~~4. The defendant could not reasonably have foreseen that his conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person.~~

~~5. The defendant's age.~~

~~H. For purposes of determining whether a conviction of any dangerous crime against children is a serious offense pursuant to this section, an unborn child shall be treated like a minor who is under twelve years of age.~~

~~I. For the purposes of this section, "serious offense" means any of the following offenses if committed in this state or any offense committed outside this state that if committed in this state would constitute one of the following offenses:~~

~~1. First degree murder.~~

~~2. Second degree murder.~~

~~3. Manslaughter.~~

~~4. Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument.~~

~~5. Sexual assault.~~

~~6. Any dangerous crime against children.~~

~~7. Arson of an occupied structure.~~

~~8. Robbery.~~

~~9. Burglary in the first degree.~~

~~10. Kidnapping.~~

~~11. Sexual conduct with a minor under fifteen years of age.~~

~~12. Burglary in the second degree.~~

~~13. Terrorism.~~

B. THE VICTIM HAS THE RIGHT TO BE PRESENT AT ANY SENTENCING PROCEEDING AND TO PRESENT ANY INFORMATION THAT IS RELEVANT TO THE PROCEEDING. THE VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE IMPACT OF THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A VICTIM

1 IMPACT STATEMENT IN ANY FORMAT. FOR THE PURPOSES OF THIS SUBSECTION,  
2 "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER LAWFUL  
3 REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL  
4 REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

5 Sec. 4. Repeal

6 Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2005,  
7 chapter 325, section 3, section 13-703.01, Arizona Revised Statutes, as  
8 amended by Laws 2005, chapter 325, section 4 and sections 13-703.02,  
9 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 and 13-706, Arizona Revised  
10 Statutes, are repealed.

11 Sec. 5. Section 13-1105, Arizona Revised Statutes, is amended to read:

12 13-1105. First degree murder; classification

13 A. A person commits first degree murder if:

14 1. Intending or knowing that the person's conduct will cause death,  
15 the person causes the death of another person, including an unborn child,  
16 with premeditation or, as a result of causing the death of another person  
17 with premeditation, causes the death of an unborn child.

18 2. Acting either alone or with one or more other persons the person  
19 commits or attempts to commit sexual conduct with a minor under section  
20 13-1405, sexual assault under section 13-1406, molestation of a child under  
21 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under  
22 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under  
23 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under  
24 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory  
25 threshold amount for each offense or combination of offenses, involving or  
26 using minors in drug offenses under section 13-3409, kidnapping under section  
27 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under  
28 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or  
29 13-1904, escape under section 13-2503 or 13-2504, child abuse under section  
30 13-3623, subsection A, paragraph 1, ~~or~~ or unlawful flight from a pursuing law  
31 enforcement vehicle under section 28-622.01 and in the course of and in  
32 furtherance of the offense or immediate flight from the offense, the person  
33 or another person causes the death of any person.

34 3. Intending or knowing that the person's conduct will cause death to  
35 a law enforcement officer, the person causes the death of a law enforcement  
36 officer who is in the line of duty.

37 B. Homicide, as prescribed in subsection A, paragraph 2 of this  
38 section, requires no specific mental state other than what is required for  
39 the commission of any of the enumerated felonies.

40 C. An offense under subsection A, paragraph 1 of this section applies  
41 to an unborn child in the womb at any stage of its development. A person  
42 shall not be prosecuted under subsection A, paragraph 1 of this section if  
43 any of the following applies:

44 1. The person was performing an abortion for which the consent of the  
45 pregnant woman, or a person authorized by law to act on the pregnant woman's

1 behalf, has been obtained or for which the consent was implied or authorized  
2 by law.

3 2. The person was performing medical treatment on the pregnant woman  
4 or the pregnant woman's unborn child.

5 3. The person was the unborn child's mother.

6 D. First degree murder is a class 1 felony and is punishable by ~~death~~  
7 ~~or~~ life OR NATURAL LIFE imprisonment as provided by ~~sections~~ SECTION 13-703  
8 ~~and 13-703.01~~.

9 Sec. 6. Section 13-3841, Arizona Revised Statutes, is amended to read:  
10 13-3841. Definitions

11 In this article, unless the context otherwise requires:

12 1. "Charged with crime", "criminal charge" or "criminal offense"  
13 includes any of the following:

14 (a) A felony or misdemeanor offense.

15 (b) Escape from confinement or the custody of any of the following:

16 (i) A law enforcement officer.

17 (ii) A custodial official.

18 (iii) A custodial agency.

19 (iv) A custodial institution.

20 (c) Being accused on a warrant of violating the terms of federal or  
21 state supervision.

22 (d) Being accused of violating bail or conditions of release.

23 (e) ~~The conviction~~ BEING CONVICTED of a crime.

24 (f) Having an unserved remaining criminal sentence.

25 ~~(g) Being subject to the death penalty on criminal conviction.~~

26 2. "Governor" includes any person performing the functions of governor  
27 by authority of the law of this state.

28 3. "Executive authority" includes the governor, and any person  
29 performing the functions of governor in a state other than this state.

30 4. "State," when referring to a state other than this state, means  
31 any other state or territory, organized or unorganized, of the United States.

32 Sec. 7. Section 13-3854, Arizona Revised Statutes, is amended to read:  
33 13-3854. Arrest without a warrant

34 ~~The arrest of a person~~ A PEACE OFFICER OR A PRIVATE CITIZEN may be  
35 lawfully ~~made also by any peace officer or a private citizen~~ MAKE AN ARREST  
36 without a warrant ~~upon~~ ON reasonable information that the accused stands  
37 charged in the courts of another state with a crime punishable by ~~death or~~  
38 imprisonment for a term exceeding one year, ~~but when so arrested.~~ ON ARREST,  
39 the accused must be taken before a judge or magistrate with all practicable  
40 speed and A complaint must be made against ~~him~~ THE ACCUSED under oath  
41 ~~setting.~~ THE COMPLAINT SHALL SET forth the ground for the arrest as in  
42 section 13-3853, and thereafter ~~his~~ THE answer shall be heard as if ~~he~~ THE  
43 ACCUSED had been arrested on a warrant.

1           Sec. 8. Section 13-3856, Arizona Revised Statutes, is amended to read:

2           13-3856. Bail; in what cases; conditions of bond

3           Unless the offense with which the person is charged is an offense that  
4 is punishable by ~~death or~~ life imprisonment under the laws of the state in  
5 which ~~it~~ THE OFFENSE was committed, or the person is alleged to have escaped  
6 from jail or prison or violated the terms of release following conviction of  
7 a crime that is punishable in the state of conviction by imprisonment for a  
8 term exceeding one year, a judge or magistrate in this state shall admit the  
9 person arrested to bail by bond or undertaking, with sufficient sureties, and  
10 in such sum as the court deems proper, conditioned on the person's appearance  
11 before the court at all times specified by the court, and for the person's  
12 surrender, upon the warrant of the governor of this state. This section does  
13 not prevent the immediate service of the governor's warrant that is issued  
14 pursuant to section 13-3847.

15           Sec. 9. Section 13-3859.02, Arizona Revised Statutes, is amended to  
16 read:

17           13-3859.02. Imprisonment; alternative methods of extradition

18           If after a local criminal prosecution a fugitive defendant is sentenced  
19 to serve a term of imprisonment in a correctional facility or a county jail,  
20 the court shall vacate the fugitive proceedings and shall exonerate the  
21 fugitive bond. After the proceedings are vacated and the bond is exonerated,  
22 ~~except for death penalty cases,~~ sections 31-481 and 31-482 apply. If  
23 sections 31-481 and 31-482 do not apply, the fugitive matter is governed by  
24 any other applicable procedure for the rendition or extradition of fugitives,  
25 subject to section 13-3859. The defendant's fugitive status is not  
26 extinguished by the sentence of imprisonment.

27           Sec. 10. Section 13-3870, Arizona Revised Statutes, is amended to  
28 read:

29           13-3870. Executive agreements

30           A. If this state wishes to obtain custody of a person WHO IS charged  
31 in this state with a criminal offense and the person was convicted or is  
32 imprisoned or held under criminal proceedings then pending against him in  
33 another state, the governor of this state and the executive authority of the  
34 other state may agree on the extradition of the person before the criminal  
35 proceedings against the person have terminated or the person's sentence has  
36 been served in the other state.

37           B. Any executive agreement entered into pursuant to subsection A of  
38 this section shall be conditioned on the return of the person to the other  
39 state at this state's expense as soon as the prosecution in this state is  
40 terminated, ~~unless the person is sentenced to death under the laws of this~~  
41 ~~state.~~

42           C. On demand of the executive authority of another state the governor  
43 may surrender a person in this state who was returned to this state pursuant  
44 to section 13-3863 and who has been charged with a criminal offense in the

1 demanding state. The person may be surrendered even if the person left the  
2 demanding state involuntarily.

3 Sec. 11. Section 13-3961, Arizona Revised Statutes, is amended to  
4 read:

5 13-3961. Offenses not bailable: purpose: preconviction:  
6 exceptions

7 A. A person who is in custody shall not be admitted to bail if the  
8 proof is evident or the presumption great that the person is guilty of the  
9 offense and the offense charged is either:

10 ~~1. A capital offense.~~

11 ~~2.~~ 1. Sexual assault.

12 ~~3.~~ 2. Sexual conduct with a minor who is under fifteen years of age.

13 ~~4.~~ 3. Molestation of a child who is under fifteen years of age.

14 B. The purposes of bail and any conditions of release that are set by  
15 a judicial officer include:

16 1. Assuring the appearance of the accused.

17 2. Protecting against the intimidation of witnesses.

18 3. Protecting the safety of the victim, any other person or the  
19 community.

20 C. A person who is in custody shall not be admitted to bail if the  
21 person is charged with a felony offense and the state certifies by motion and  
22 the court finds after a hearing on the matter that there is clear and  
23 convincing evidence that the person charged poses a substantial danger to  
24 another person or the community or engaged in conduct constituting a violent  
25 offense, that no condition or combination of conditions of release may be  
26 imposed that will reasonably assure the safety of the other person or the  
27 community and that the proof is evident or the presumption great that the  
28 person committed the offense for which the person is charged. For the  
29 purposes of this subsection, "violent offense" means either of the following:

30 1. A dangerous crime against children.

31 2. Terrorism.

32 D. On oral motion of the state, the court shall order the hearing  
33 required by subsection C at or within twenty-four hours of the initial  
34 appearance unless the person who is subject to detention or the state moves  
35 for a continuance. A continuance that is granted on the motion of the person  
36 shall not exceed five calendar days unless there are extenuating  
37 circumstances. A continuance on the motion of the state shall be granted on  
38 good cause shown and shall not exceed twenty-four hours. The person may be  
39 detained pending the hearing. The person is entitled to representation by  
40 counsel and is entitled to present information by proffer or otherwise, to  
41 testify and to present witnesses in the person's own behalf. Testimony of  
42 the person charged that is given during the hearing shall not be admissible  
43 on the issue of guilt in any subsequent judicial proceeding, except as it  
44 might relate to the compliance with or violation of any condition of release  
45 subsequently imposed or the imposition of appropriate sentence or in perjury

proceedings, or for the purposes of impeachment. The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person's trial shall be given priority. Such person may be admitted to bail in accordance with the Arizona rules of criminal procedure whenever a judicial officer finds that a subsequent event has eliminated the basis for detention.

E. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn.

Sec. 12. Repeal

Title 13, chapter 38, article 17, Arizona Revised Statutes, is repealed.

Sec. 13. Section 13-4031, Arizona Revised Statutes, is amended to read:

13-4031. Right of appeal

The state, or any party to a prosecution by indictment, information or complaint, may appeal as prescribed by law and in the manner provided by the ARIZONA rules of criminal procedure, ~~except criminal actions involving crimes for which a sentence of death has actually been imposed may only be appealed to the supreme court.~~

Sec. 14. Section 13-4033, Arizona Revised Statutes, is amended to read:

13-4033. Appeal by defendant

A. An appeal may be taken by the defendant only from:

1. A final judgment of conviction or verdict of guilty except insane.
2. An order denying a motion for a new trial or from an order made after judgment affecting the substantial rights of the party.
3. A sentence on the grounds that it is illegal or excessive.

B. ~~In noncapital cases~~ A defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation.

Sec. 15. Section 13-4040, Arizona Revised Statutes, is amended to read:

13-4040. Divestiture of jurisdiction of supreme court after remission of minute entry and decision

After a certified copy of the minute entry and a copy of the decision of the supreme court in a criminal appeal ~~has~~ HAVE been remitted to the trial court from which the appeal was taken, the supreme court shall have no further jurisdiction of the appeal, or of the proceedings thereon. All orders ~~which~~ THAT may be necessary to carry the decision of the supreme court into effect shall be made by the court to which the copy of the minute entry and decision is remitted, ~~except when a judgment or sentence of death has been affirmed on appeal after the time appointed for the execution of the sentence and the supreme court has fixed a new time for execution and issued a warrant to the director of the department of corrections to execute the sentence at the time designated in the warrant.~~

1       Sec. 16. Section 13-4041, Arizona Revised Statutes, is amended to  
2 read:

3       13-4041. Fee of counsel assigned in criminal proceeding or  
4       insanity hearing on appeal or in postconviction  
5       relief proceedings; reimbursement

6       A. ~~Except pursuant to subsection G of this section,~~ If counsel is  
7 appointed by the court to represent the defendant in either a criminal  
8 proceeding or insanity hearing on appeal, the county in which the court from  
9 which the appeal is taken presides shall pay counsel, except that in those  
10 appeals where the defendant is represented by a public defender or other  
11 publicly funded office, ~~THE COUNTY SHALL NOT SET OR PAY~~ compensation ~~shall~~  
12 ~~not be set or paid~~. Compensation for services rendered on appeal shall be in  
13 an amount as the supreme court in its discretion deems reasonable,  
14 considering the services performed.

15       ~~B. After the supreme court has affirmed a defendant's conviction and~~  
16 ~~sentence in a capital case, the supreme court, or if authorized by the~~  
17 ~~supreme court, the presiding judge of the county from which the case~~  
18 ~~originated shall appoint counsel to represent the capital defendant in the~~  
19 ~~state post-conviction relief proceeding. Counsel shall meet the following~~  
20 ~~qualifications:~~

21       ~~1. Membership in good standing of the state bar of Arizona for at~~  
22 ~~least five years immediately preceding the appointment.~~

23       ~~2. Practice in the area of state criminal appeals or post-conviction~~  
24 ~~proceedings for at least three years immediately preceding the appointment.~~

25       ~~3. No previous representation of the capital defendant in the case~~  
26 ~~either in the trial court or in the direct appeal, unless the defendant and~~  
27 ~~counsel expressly request continued representation and waive all potential~~  
28 ~~issues that are foreclosed by continued representation.~~

29       ~~C. The supreme court shall establish and maintain a list of qualified~~  
30 ~~candidates. In addition to the qualifications prescribed in subsection B of~~  
31 ~~this section, the supreme court may establish by rule more stringent~~  
32 ~~standards of competency for the appointment of post conviction counsel in~~  
33 ~~capital cases. The supreme court may refuse to certify an attorney on the~~  
34 ~~list who meets the qualifications established under subsection B of this~~  
35 ~~section or may remove an attorney from the list who meets the qualifications~~  
36 ~~established under subsection B of this section if the supreme court~~  
37 ~~determines that the attorney is incapable or unable to adequately represent a~~  
38 ~~capital defendant. The court shall appoint counsel pursuant to subsection B~~  
39 ~~of this section from the list.~~

40       ~~D. Notwithstanding subsection C of this section, the court may appoint~~  
41 ~~counsel pursuant to subsection B of this section from outside the list of~~  
42 ~~qualified candidates if either:~~

43       ~~1. No counsel meets the qualifications under subsections B and C of~~  
44 ~~this section.~~

~~2. No qualified counsel is available to serve.~~

~~E. Before filing a petition, the capital defendant may personally appear before the trial court and waive counsel. If the trial court finds that the waiver is knowing and voluntary, appointed counsel may withdraw. The time limits in which to file a petition shall not be extended due solely to the change from appointed counsel to self representation.~~

~~F. If at any time the trial court determines that the capital defendant is not indigent, appointed counsel shall no longer be compensated by public monies and may withdraw.~~

~~G. Unless counsel is employed by a publicly funded office, counsel appointed to represent a capital defendant in state post conviction relief proceedings shall be paid an hourly rate of not to exceed one hundred dollars per hour for up to two hundred hours of work, whether or not a petition is filed. Monies shall not be paid to court appointed counsel unless either:~~

~~1. A petition is timely filed.~~

~~2. If a petition is not filed, a notice is timely filed stating that counsel has reviewed the record and found no meritorious claim.~~

~~H.~~ B. On a showing of good cause, the trial court shall compensate appointed counsel from county funds ~~in addition to the amount of compensation prescribed by subsection G of this section~~ by paying an hourly rate in an amount that does not exceed one hundred dollars per hour. The attorney may establish good cause for additional fees by demonstrating that the attorney spent over two hundred hours representing the defendant in the proceedings. The court shall review and approve additional reasonable fees and costs. If the attorney believes that the court has set an unreasonably low hourly rate or if the court finds that the hours the attorney spent over the two hundred hour threshold are unreasonable, the attorney may file a special action with the Arizona supreme court. If counsel is appointed in successive ~~post conviction~~ POSTCONVICTION relief proceedings, compensation shall be paid pursuant to section 13-4013, ~~subsection A.~~

~~I. The county shall request reimbursement for fees it incurs pursuant to subsections G, H and J of this section arising out of the appointment of counsel to represent an indigent capital defendant in a state post conviction relief proceeding. The state shall pay fifty per cent of the fees incurred by the county out of monies appropriated to the supreme court for these purposes. The supreme court shall approve county requests for reimbursement after certification that the amount requested is owed.~~

~~J.~~ C. The trial court may authorize additional monies to pay for investigative and expert services that are reasonably necessary to adequately litigate those claims that are not precluded by section 13-4232.

Sec. 17. Repeal

Section ~~13-4042~~, Arizona Revised Statutes, is repealed.



1           Sec. 18. Section 13-4234, Arizona Revised Statutes, is amended to  
2 read:

3           13-4234. Commencement of proceedings; notice; assignment of  
4                           judge

5           A. A proceeding is commenced by timely filing a notice of  
6 ~~post-conviction~~ POSTCONVICTION relief with the clerk of the court in which  
7 the conviction occurred. The clerk of the trial court shall provide notice  
8 forms for commencement of first and successive ~~post-conviction~~ POSTCONVICTION  
9 relief proceedings. The notice shall bear the caption of the original  
10 criminal action to which it pertains. The notice in successive  
11 ~~post-conviction~~ POSTCONVICTION relief proceedings shall comply with section  
12 13-4232, subsection B. On receipt of the notice, the clerk of the trial  
13 court shall file a copy of the notice in the case file of each original  
14 action and promptly send copies to the defendant, the defendant's attorney,  
15 if known, the county attorney and the attorney general, noting the date and  
16 manner of sending the copies in the record. The state shall notify the  
17 victim on request.

18           B. If an appeal of the defendant's conviction or sentence, or both, is  
19 pending, the clerk, within five days after the filing of the notice for  
20 ~~post-conviction~~ POSTCONVICTION relief, shall send a copy of the notice to the  
21 appropriate appellate court, noting the date and manner of sending the copy  
22 in the record.

23           C. ~~In noncapital cases,~~ The notice shall be filed within ninety days  
24 after the judgment and sentence are entered or within thirty days after the  
25 order and mandate affirming the judgment and sentence is issued on direct  
26 appeal, whichever is later. A defendant has sixty days from the filing of  
27 the notice in which to file a petition. On the filing of a successive  
28 notice, a defendant has thirty days from the filing of the notice in which to  
29 file a petition.

30           ~~D. In capital cases, on the issuance of a mandate affirming the~~  
31 ~~defendant's conviction and sentence on direct appeal, the clerk of the~~  
32 ~~supreme court expeditiously shall file a notice of post conviction relief~~  
33 ~~with the trial court. On the first notice in capital cases, a defendant has~~  
34 ~~sixty days from the filing of the notice in which to file a petition. The~~  
35 ~~supreme court shall appoint counsel pursuant to section 13-4041,~~  
36 ~~subsection B. All indigent state prisoners under a capital sentence are~~  
37 ~~entitled to the appointment of counsel to represent them in state~~  
38 ~~post-conviction proceedings. A competent indigent defendant may reject the~~  
39 ~~offer of counsel with an understanding of its legal consequence. On~~  
40 ~~successive notice in capital cases, the trial court shall appoint the~~  
41 ~~previous post-conviction relief counsel of the capital defendant unless~~  
42 ~~counsel is waived pursuant to section 13-4041, subsection E or good cause~~  
43 ~~exists to appoint another qualified attorney pursuant to section 13-4041,~~  
44 ~~subsection B. On the filing of a successive notice, a capital defendant or~~

~~an appointed attorney has thirty days from the filing of the notice in which to file a petition.~~

~~F.~~ D. A defendant who has pled guilty and who is precluded from filing a direct appeal pursuant to section 13-4033 may be granted an additional thirty day extension of time in which to file the petition if the defendant's counsel refuses to raise issues and leaves the defendant insufficient time to file a petition within the time limits.

~~F.~~ E. On a specific and detailed showing of good cause, a defendant ~~in a noncapital case~~ may be granted up to a sixty day extension of time in which to file the petition. ~~On a specific and detailed showing of good cause, a defendant in a capital case may be granted one thirty day extension of time in which to file the petition.~~

~~G.~~ F. The time limits are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice.

~~H.~~ G. If the record of the trial proceeding has not been transcribed, the defendant may request on a form provided by the clerk of the superior court that the record be prepared. The court shall order that those portions of the record be prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the record is a county expense if the defendant is indigent. The time for filing the petition is tolled from the time a request for the record is made until the record is prepared or the request is denied.

~~I.~~ H. The proceeding shall be assigned to the sentencing judge if it is possible. If it appears that the sentencing judge's testimony is relevant, the sentencing judge shall transfer the case to another judge.

~~J. If the defendant has received a sentence of death and the supreme court has fixed the time for execution of the sentence, a stay of execution shall not be granted on the filing of a second or subsequent petition except on separate application for a stay to the supreme court setting forth with particularity those issues raised which are not precluded under section 13-4232. The warrant shall not be stayed to allow for the filing of a petition.~~

Sec. 19. Repeal

Section ~~13-4234.01~~, Arizona Revised Statutes, is repealed.

Sec. 20. Section 21-102, Arizona Revised Statutes, is amended to read:

~~21-102.~~ Juries; size; degree of unanimity required; waiver

A. A jury for trial of a criminal case in which a sentence of ~~death or~~ imprisonment for thirty years or more is authorized by law shall consist of twelve persons, and the concurrence of all shall be necessary to render a verdict.

B. A jury for trial in any court of record of any other criminal case shall consist of eight persons, and the concurrence of all shall be necessary to render a verdict.

C. A jury for trial in any court of record of a civil case shall consist of eight persons, and the concurrence of all but two shall be necessary to render a verdict.

D. In a court not of record, a jury for trial of any case shall consist of six persons. The concurrence of all in a criminal case and all but one in a civil case shall be necessary to render a verdict.

E. The parties in a civil case, and the parties with the consent of the court in a criminal case, may waive trial by jury, or at any time before a verdict is returned consent to try the case with or receive a verdict concurred in by a lesser number of jurors than that specified above.

Sec. 21. Section 31-445, Arizona Revised Statutes, is amended to read:

31-445. Publication of reasons for granting a commutation, pardon or reprieve

~~When the governor grants a commutation, pardon, reprieve or stay or suspends execution of sentence in a case where a sentence of death is imposed, he shall,~~ Within ten days after granting ~~the~~ A commutation, pardon, ~~OR~~ reprieve ~~or stay or suspension of execution, cause to be published~~ **THE GOVERNOR SHALL PUBLISH** in bold type, in a newspaper of general circulation, ~~THAT IS~~ published in the county where the conviction was had, and shall file with the secretary of state for publication in the Arizona administrative register, a statement setting forth ~~his~~ **THE GOVERNOR'S** reasons for granting the commutation, pardon, ~~OR~~ reprieve ~~or for staying or suspending such execution.~~ A further reprieve shall not be granted except ~~upon~~ **ON** the same procedure.

Sec. 22. Section 41-1013, Arizona Revised Statutes, is amended to read:

41-1013. Register

A. The secretary of state shall publish the register at least once each month, including the information ~~which~~ **THAT** is provided under subsection B of this section and ~~which~~ **THAT** is filed with the secretary of state during the preceding thirty days. The secretary of state shall publish an index to the register at least twice each year.

B. The register shall contain:

1. A schedule of the time, date and place of all hearings on proposed repeals, makings or amendments of rules.

2. Each governor's executive order.

3. Each governor's proclamation of general applicability, and each statement filed by the governor in granting a commutation, pardon or reprieve ~~or stay or suspension of execution where a sentence of death is imposed.~~

4. A summary of each attorney general's opinion.

5. Each governor's appointment of state officials and board and commission members.

6. A table of contents.

7. The notice and agency summary of each docket opening.

8. The full text and accompanying preamble of each proposed rule.

1           9. The full text and accompanying preamble of each final rule.

2           10. The full text and accompanying preamble of each emergency rule.

3           11. Supplemental notices of a proposed rule or summary rule.

4           12. A summary of council action on each rule.

5           13. The full text of any exempt final rule filed with the secretary of  
6 state pursuant to section 41-1005, subsection C.

7           14. The identification and a summary of substantive policy statements  
8 and notice and a summary of any guidance document publication or revision  
9 submitted by an agency.

10          15. Notices of oral proceedings, public workshops or other meetings on  
11 an open rule making docket.

12          C. The register shall be available by subscription and for single copy  
13 purchase. The charge for each register or periodic subscription shall be a  
14 reasonable charge, not to exceed all costs of production and distribution of  
15 the register.

16          D. For purposes of this section, full text publication in the register  
17 includes all new, amended or added language and such existing language as the  
18 proposing agency deems necessary for a proper understanding of the proposed  
19 rule. Rules that are undergoing extensive revision may be reprinted in  
20 whole. Existing rule language not required for understanding shall be  
21 omitted and marked "no change".

22          Sec. 23. Death sentences; commutation

23          The supreme court shall remand each case in which a sentence of death  
24 was imposed before the effective date of this act to the court in the county  
25 in which the sentence of death was imposed and that court shall strike the  
26 sentence of death and enter in its place a sentence of natural life. An  
27 order sentencing a prisoner to natural life is not subject to commutation,  
28 parole, community supervision, work furlough or work release.